

United States Government

Department of Energy

# memorandum

DATE: February 23, 1996

REPLY TO: Office of Environmental Policy and Assistance (EH-413):Nakata:6-0801

ATTN OF:

SUBJECT: **CLARIFICATION OF NATIONAL PRIORITIES LIST (NPL) LISTING POLICY**

TO: Distribution

## **PURPOSE OF THIS MEMO**

To provide DOE elements with information on the Environmental Protection Agency (EPA), Office of Emergency and Remedial Response August 3, 1995, memo clarifying and expanding upon the Agency's policy concerning the listing of sites on the National Priorities List (NPL). The EPA memo:

- addresses the misconception that Federal facilities (most particularly) are listed on a fenceline-to-fenceline basis; and
- emphasizes that NPL sites include only areas of contamination.

## **CLARIFICATION OF LISTING POLICY**

The NPL is a listing of sites under Section 105 of the Comprehensive Environmental Response, Liability, and Compensation Act (CERCLA) where known or threatened releases of hazardous substances have occurred and identified them as a priority for further evaluation. Although a CERCLA site is broadly defined to include the area(s) where a hazardous substance(s) has "come to be located," the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. In addition, it is often convenient or necessary to describe a site on the NPL in terms of a known geographic boundary (e.g., the "Jones Company plant site"). However, EPA makes clear in the subject memo that the "CERCLA site" is not defined by the geographic boundaries of a particular facility. The site encompasses all areas of contamination and is not limited to the property boundary. For example, the site may extend outside the property boundary due to migration, or conversely, the site may only encompass a smaller area inside the property boundary.

The full nature and extent of contamination is typically not known at the time of NPL listing; therefore, the size of the site may expand or contract as more data are gathered during the remedial investigation.

- Even though a site may be *described* on the NPL as "XYZ facility," the entire facility (i.e., fenceline-to-fenceline) and the "CERCLA site" are *not* synonymous. The actual NPL site only includes areas of contamination.

In particular, the subject memo highlights the need to distinguish between contaminated vs. clean areas of a facility and between contaminated areas and the property boundaries of a facility (i.e., to

define the site by identifying the areas of contamination within the facility property boundaries and outside the facility property boundary if the contaminants have migrated off the facility). With this approach, clean parcels of property can be identified for future economic redevelopment while environmental remediation activities are conducted at contaminated areas of the site.

---

**IMPLICATIONS  
TO DOE  
FACILITIES**

The definition of an NPL site consisting of a portion of a DOE facility rather than an entire facility has many implications to DOE operations, particularly environmental restoration activities. The application of related policies and regulatory requirements will differ depending upon where the boundaries of the "CERCLA site" are determined to be located at a DOE facility. Key examples of related policies, requirements and associated DOE guidance documents are described below.

On-Site Response Actions under CERCLA. The National Contingency Plan (NCP) defines *on-site* as "the areal extent of contamination and all suitable areas in (very close) proximity to the contamination necessary to implement response actions" (40 CFR 300.400(e)(1)). Further, the NCP requires that on-site response actions comply with Applicable and Relevant or Appropriate Requirements (ARARs). ARARs that define a level or standard of control (i.e., substantive requirements) must be met during *on-site* CERCLA response activities. Requirements such as issuance of permits are viewed as "administrative" and, under Section 121(e) of CERCLA, do not apply to *on-site* CERCLA remedial actions (55 FR 8756).

- Implication--Particularly at large DOE facilities, situations might arise where environmental restoration activities conducted under CERCLA at locations off the NPL site (e.g., remedial waste treatment, storage, disposal) may be subject to applicable substantive and administrative requirements even though the activities takes place within the facility fenceline (i.e., property boundaries).

*See EH-413 memorandum dated October 12, 1995, subject: Guide to Ground Water Remediation in CERCLA Responses and RCRA Corrective Action Sites (DOE/EH-0505).*

Off-Site Transfer of CERCLA Wastes. The NCP "Off-Site Final Rule" [58 FR 49200, 09/22/93 (40 CFR 300.440)] requires that the acceptability of an off-site treatment, storage or disposal facility be determined before CERCLA wastes are transferred there.

- Implication--In the event that remedial wastes from a CERCLA site are sent to a RCRA treatment, storage or disposal (TSD) unit at the same DOE facility, but located outside the CERCLA "on-site" area of contamination, DOE

may be required to adhere to the criteria for acceptability established by the Off-Site Final Rule.

*See EH-413 memorandum dated September 30, 1994, subject: Guide to Selecting Compliant Off-Site Hazardous Waste Treatment, Storage and Disposal Facilities (DOE EH-0427).*

Partial Deletion of NPL Sites. On November 1, 1995, EPA changed its policy concerning deletion of sites from the NPL. EPA will now delete releases of hazardous substances at portions of sites, if those releases qualify for deletion. EPA's objective is to promote the economic redevelopment of CERCLA sites, and better communicate the completion of successful partial cleanups.

- Implication--DOE NPL sites that meet the standard provided in the NCP, i.e., no further response is appropriate, may be the subject of entire or partial deletion.

*See 40 CFR Part 300; "Notice of Policy Change: Partial Deletion of Sites from the National Priorities List" 60 FR 55466; 11/1/95.*

#### ATTACHMENT

EPA, Office of Emergency and Remedial Response memorandum, dated August 3, 1995, from the (Acting) Director, OERR to Regional Waste Management Division Directors, subject: "Clarification of NPL Listing Policy."

#### CONTACT

Questions concerning the information presented herein, or the documents cited herein, may be directed to Katherine Nakata of my staff by ...

- o calling (202) 586-0801,
- o faxing messages to (202) 586-3915
- o communicating electronically, via Internet, to katherine.nakata@hq.doe.gov.



Thomas T. Traceski  
Director, RCRA/CERCLA Division  
Office of Environmental Policy and Assistance

Attachment  
(not available)